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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CITIZENS AGAINST RENT CONTROL, *et al.*,
Appellants,

vs.

CITY OF BERKELEY, *et al.*,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

BRIEF IN SUPPORT OF APPELLEES BY AMICUS CURIAE CITY AND COUNTY OF SAN FRANCISCO

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BRIEF IN SUPPORT OF APPELLEES BY AMICUS CURIAE CITY AND COUNTY OF SAN FRANCISCO

STATEMENT OF INTEREST

In 1973, San Francisco adopted a legislative scheme designed to protect the democratic process of direct legislation from corruption. The Municipal Election Campaign Control Act (Ordinance 261-73, amended by Ordinances 447-73, 114-76, 292-76 and 165-77) appears in the San Francisco Administrative Code as Article XII, Section 16.501 *et seq.* A key portion of that scheme is Section 16.508(b)(1), which imposes a $500

limit on individual and organizational contributions to a committee formed for the purpose of influencing citizens to vote in support of or in opposition to a municipal ballot measure.[1]

The November 7, 1978, general election in San Francisco included a municipal ballot measure which proposed a renters' rebate. On September 15, 1978, an organization opposing the measure, the "Committee for the Preservation of Quality Housing" (hereinafter, the "Committee") filed a complaint in Superior Court in and for the City and County of San Francisco (No. 743-366) seeking, among other things, to enjoin enforcement of Section 16.508(b)(1), *supra.* The Committee alleged that San Francisco's contribution limitation impermissibly violated freedoms of speech and association as guaranteed by the United States and California Constitutions. San Francisco defended its contribution limitation on the basis that it was a narrowly drawn restriction on First Amendment freedoms, necessary to preserve the integrity of the electoral process and the confidence of its citizens in their government. The trial court denied the Committee's application for a preliminary injunction. The Committee then sought a temporary restraining order and writ of mandate in the California Court of Appeal to compel the Superior Court to grant the preliminary injunction. The writ was denied (1 Civ. 45222). In the interim, the rebate measure was defeated, and the Committee did not further litigate the validity of San Francisco's contribution limitations.

In the instant case, on the other hand, the City of Berkeley submitted almost no evidence at the hearing in Superior Court to justify its contribution limitation. Berkeley did not prevail. Accordingly, San Francisco submitted an *amicus curiae* brief to the Court of Appeal, arguing that any decision of the court should fully recognize this absence of evidence and that the court's articulation of constitutional principles as they apply to contribution limitations in ballot measure campaigns should be carefully written so as to be confined to the record before the court.

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[1] Section 16.508(b)(1) provides, "No person shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of or opposition to any measure requiring a simple majority vote for its adoption to exceed five hundred dollars ($500)." Section 16.503(f) of the San Francisco Ordinance provides, " 'Person' shall mean any individual, partnership, corporation, association, firm, committee, club or other organization or group of persons, however organized."

San Francisco also directed the attention of the Court of Appeal to a serious flaw in the analyses of some courts, including federal courts, sister courts and California courts, which have been called on to review the legality of various attempts to regulate ballot measure campaigns. San Francisco's primary purpose in addressing its brief to the Court of Appeal was to foster a full understanding of the political process in a democratic society—particularly the process of direct legislation—as well as a recognition and appreciation of the corrupting influences that uncontrolled contributions of money can have on that process.

Finally, San Francisco sought to demonstrate to the Court of Appeal the types of evidence which might be propounded in defense of a contribution limitation in ballot measure campaigns. It sought not to supplement the record before the Court of Appeal, but to emphasize to the court that its decision in this case should not prevent other local governments in the State of California from successfully defending their contribution limitation ordinances.

Despite the efforts of San Francisco to obtain a narrow decision limited to the record in this case, the decision of the Court of Appeal posed exactly the threat which San Francisco had feared.

Accordingly, San Francisco submitted an *amicus curiae* brief to the Supreme Court of California for the same reasons it had addressed the Court of Appeal in this case. Correctly applying the strict scrutiny test, that court recognized the compelling governmental interests served by Berkeley's contribution limitation, noted the limited effect of the ordinance on freedoms of speech and association and concluded that the ordinance promotes compelling governmental interests by the least restrictive means possible. The ordinance was thus held valid both as to the First Amendment of the United States Constitution and as to Article I, Section 2 of the California Constitution.

San Francisco's interest in this litigation continues. The lack of evidence in the Superior Court record herein must be weighed against the evidence which might be propounded in defense of a contribution limitation in ballot measure campaigns by other governmental entities, and the decision of this court must be carefully written so as to allow other governmental entities to establish the validity of their ordinances. Such exercises will be futile, however, if this court does not

affirm the full analysis of the problem finally accorded by the California Supreme Court in contrast to the other courts' ready dismissal of ballot measure campaigns as beyond corruption.

SUMMARY OF ARGUMENT

Regulation of the electoral process necessarily affects First Amendment guarantees of freedom of speech and association. Such regulation must therefore meet a strict scrutiny test, whereby government must prove that the regulation serves compelling interests by the least restrictive means possible.

The constitutional validity of contribution limitations in ballot measure campaigns is a question of first impression for this court. Previous cases in this and other courts which have dealt with related questions must be carefully distinguished. Previous decisions in other courts which have dealt with this question must be examined closely both in terms of evidence and logical analysis.

Corruption of the electoral process is not limited to the quid pro quo of large contributions to candidates, creating a political debt. Direct, as well as representative, democracy is susceptible to corruption and the appearance of corruption. Not only is direct democracy susceptible, it has succumbed, and the effects—alienation from the electoral process as a whole, disbelief in the legitimacy of the government and its laws—are the compelling concerns which governments seek to address by regulation. Contribution limitations in ballot measure campaigns serve compelling government interests without unduly restricting freedoms of speech and association.

ARGUMENT

A. Basic Principles

Democratic government's claim to legitimacy rests in large part on the widely held conviction that a democracy is, in the immortal words of President Abraham Lincoln, "of the people, by the people, and for the people." Thus, the electoral process lies at the very heart of democratic government.[2] The right of government to protect the integrity of the electoral process through regulation is well established.[3] Such regulation how-

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[2] Rosenthal, *Campaign Financing and the Constitution*, 9 HAR. J. LEGIS. 359 (1972).

[3] Comment, *The Constitutionality of Limitations on Individual Campaign Contributions and Expenditures: The Supreme Court's Decision in Buckley v. Valeo* 25 EMORY L. J. 400 (1976).

ever, operates in the area of the activities protected by the First Amendment guarantees of freedom of speech and association. This court in *Buckley* v. *Valeo* 424 U.S. 1, 46 L.Ed.2d 659, 96 S.Ct. 612 (1976) recognized the dilemma. The court noted, at 424 U.S. 14-15:

> Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protections to such political expression in order to 'assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.' [Citations omitted.]
>
> * * *
>
> The First Amendment protects political association as well as political expression. The Constitutional right of association explicated in *N.A.A.C.P.* v. *Alabama* [citation omitted] stemmed from the Court's recognition that '[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association.'

However, the court also noted, at 25, that the First Amendment does not afford such activities absolute protection:

> *Even a 'significant interference' with protected rights . . . may be sustained if the state demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgements of [these] freedoms.* [Citations omitted.] (Emphasis added.)

In *First National Bank of Boston* v. *Bellotti* 435 U.S. 765, 55 L.Ed.2d 707, 98 S.Ct. 1407 (1978), this court, at 435 U.S. 788-789, enumerated the elements of state interest which may justify interference with the exercise of speech and associational rights in the electoral context:

> Preserving the integrity of the electoral process, preventing corruption, and 'sustain[ing] the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government' are interests of the highest importance. [Citations omitted.] *Preservation of the individual citizen's confidence in government is equally important.* [Citations omitted.] (Emphasis added.)

B. This Court Has Upheld the Constitutionality of Contribution Limitations in Candidate Campaigns

This court in *Buckley, supra,* struck down federal limitations on campaign *expenditures* in candidate elections as improper infringements on First Amendment rights. At the same time, the court upheld the constitutionality of federal limitations on campaign *contributions* in candidate elections. With regard to the effect of contribution limitations on freedom of speech, the court stated, at 424 U.S. 20-21:

> By contrast with a limitation upon expenditures for political expression, a *limitation upon the amount that any one person or group may contribute* to a candidate or political committee *contains only a marginal restriction upon the contributor's ability to engage in free communication.*
>
> A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support. The quantity of communication by the contributor does not increase perceptibly with the size of the contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing. At most, the size of the contribution provides a very rough index of the intensity of the contributor's support for the candidate. A *limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication, for it* permits the symbolic expression of support evidenced by a contribution but *does not in any way infringe the contributor's freedom to discuss candidates and issues.* While contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor. (Emphasis added.)

With respect to the freedom of association, the court noted, at 22, that contribution limitations

> also impinge on protected associational freedoms. Making a contribution, like joining a political party, serves to affiliate a person with a candidate. In addition, it enables like-minded persons to pool their resources in furtherance of common political goals . . . [C]ontribution ceilings thus limit one important means of associating with a candidate or committee, but leave the contributor free to

> become a member of any political association and to assist personally in the association's efforts . . . And . . . contribution limitations permit associations and candidates to aggregate large sums of money to promote effective advocacy.

Contribution limitations, therefore, contain only a marginal restriction on both the contributor's and the recipient's ability to associate freely.

Having characterized the impact of contribution limitations on a contributor's First Amendment freedoms as a "marginal restriction", the court in *Buckley* was careful not to foreclose the opportunity to demonstrate an impermissible infringement on the exercise of those rights and went on to acknowledge at 21-22 that:

> . . . [C]ontribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy. *There is no indication,* [in the record] *however, that the contribution limitations imposed . . . would have any dramatic adverse effect on the funding of campaigns and political associations.* The overall effect of . . . contribution ceilings is merely to require candidates and political committees to raise funds from a greater number of persons and to compel people who would otherwise contribute amounts greater than the statutory limits to expend such funds on direct political expression, rather than to reduce the total amount of money potentially available to promote political expression. (Emphasis added).

The issue at bar—whether a limitation on contributions to a committee supporting or opposing a ballot measure is constitutionally valid—is one of first impression. Clearly a contribution limitation in ballot measure campaigns must pass the strict scrutiny test in which both a compelling government interest and a closely drawn means of serving that interest must be shown.

C. The "Leading Cases" Provide Little Assistance to This Court

United States v. *National Committee for Impeachment* 469 F.2d 1135 (2d Cir. 1972); *Schwartz* v. *Romnes* 495 F.2d 844 (2d Cir. 1974); *Pacific Gas & Electric Company* v. *City of Berkeley* 60 Cal.App.3d 123, 131 Cal.Rptr. 350 (1976); *First National Bank of Boston* v. *Bellotti, supra; C. & C. Plywood*

Corp. v. *Hanson* 420 F.Supp. 1254 (D. Mont. 1976), affirmed 583 F.2d 421 (9th Cir. 1978); *Frias* v. *Board of Trustees of Ector County* 584 S.W.2d 944 (Tex. Civ. App. 1979); and *Let's Help Florida* v. *Smathers* 453 F.Supp. 1003 (N. D. Fla. 1978) affirmed sub.nom. *Let's Help Florida* v. *McCrary* 621 F.2d 195 (5th Cir. 1980), reveal the development of an erroneous and dangerous line of reasoning.

These cases have failed to distinguish between the public interest in relatively abstract and unfocused discussion of political issues in general on the one hand, and the more real and immediate public interest in a balanced, fair discussion of political issues in the context of a ballot measure campaign on the other hand. The courts' inability to see the basic similarity between the two arenas of the electoral process—the election of representatives to various levels of government and the adoption of public policies through direct legislation—has resulted in the failure to recognize that both are fertile soil for the seeds of corruption. This error has been compounded by the mistaken equation of corruption with nothing more than personal cupidity. The failure both to see the potential for corruption, except in the context of the "bought" politician, and to embrace the generic meaning of corruption has precluded a judicial inquiry which could recognize or define corruption in the context of ballot measure campaigns.

Once a court concludes "corruption" does not and cannot exist in a ballot measure context, then the only remaining subject of regulation is "influence". Having viewed the object of regulation as mere "influence", the courts have concluded that no regulation of any kind is justified. Therefore, the courts have found no need to make any distinction between *prohibitions* of and *limitations* on contributions, nor have the courts found the distinctions between *expenditure* and *contribution* limitations of any value.

These cases are discussed below so that this court may understand fully the reasoning in them.

In *United States* v. *National Committee for Impeachment, supra,* at 469 F.2d 1142, the court disposed of the government's suggestion that the Federal Election Campaign Act of 1971 should apply to a committee which had paid for publication of an advertisement questioning President Nixon's stand on a principal campaign issue—the Vietnam war. The court said:

> On this basis every position on any issue, major or minor, taken by anyone would be a campaign issue and any comment upon it in, say, a newspaper editorial or an

> advertisement would be subject to proscription unless the registration and disclosure regulations of the act in question were complied with. Such a result would, we think, be abhorrent. . . . On the Government's thesis every little Audubon Society chapter would be a 'political committee,' for 'environment' is an issue in one campaign after another.

In *Schwartz* v. *Romnes, supra,* the same court considered whether corporate contributions to a committee seeking to influence the outcome of a ballot measure campaign violated a New York State law prohibiting corporate contributions to political parties, political associations, candidates, "or for any political purpose whatever." The court stated the issue, at 495 F.2d 848, as follows:

> The applicability of the section to NYT's [New York Telephone Company's] contribution [of $50,000] to YES [Yes for Transportation in New York State, Inc.] turns on whether the statute's provision prohibiting corporate payments to any corporation or association organized or maintained 'for political purposes' or payments for 'any political purpose whatever' should be interpreted as barring a corporate expenditure in support of or in opposition to a public referendum. . . .

By the time the *Schwartz* court had framed the issue, it had already characterized the ballot measure campaign as "bipartisan" (at 847) and later "essentially non-partisan" (at 848) and thus apparently apolitical. Textual analysis of the statute in question, legislative history, and comparison with related statutes only further convinced the court that the law should not apply to the problem before it. Yet, as the dissent pointed out (at 855):

> While support for the bond issue might well, and did, include individuals of varying political party affiliation, YES was obviously a fiercely 'partisan' apparatus devoted to influencing the outcome of an election—the passage of a proposition submitted to the body politic. It is thus truly political in the generic and primary sense of that term.

The *Schwartz* court, failing also to understand the generic and primary sense of the term "corruption", equated corruption solely with personal cupidity, and stated, at 851:

> . . . [W]hen the issue is one to be resolved by the public electorate, monies paid by a corporation for public expression of its views create no debt or obligation on the part of the voters to favor the corporate contributors' special interest.
>
> * * *
>
> The public remains completely free to reject the views of the corporate contributor . . . without fear of retribution or non-support by the corporate contributor.

Thus, the *Schwartz* court concluded, at 853:

> Against a background of such attenuated danger, we decline here, as we did in *United States* v. *National Committee for Impeachment* (citation omitted), to ascribe to the legislators an intention to regulate, perchance prohibit, the expression of opinion on fundamental issues of the day.

Having failed to comprehend the political nature of the direct legislative process and the possibility that it is susceptible to corruption, the *Schwartz* court could not distinguish between a general discussion of political issues and the debate in a ballot measure campaign. Moreover, the court's discussion must be viewed in its proper context, i.e., the narrow issue of whether a state corrupt practices act was intended to apply to ballot measure campaigns. See also *State ex rel. Corrigan* v. *Cleveland-Cliffs Iron Co.* 169 Ohio 42, 157 N.E.2d 331 (1959), and *State ex rel. Nybo* v. *District Court of First Judicial District* 158 Mont. 429, 492 P.2d 1395 (1972), wherein the courts held that the legislatures had not intended to include ballot measure campaigns within the term "political." But see *People* v. *Gansley* 191 Mich. 357, 158 N.W. 195 (1916), and *Commonwealth* v. *McCarthy* 281 Mass. 253, 183 N.E. 495 (1932), wherein the courts held that ballot measure campaigns were within the meaning of the term "political".

Accordingly, *National Committee, supra,* and *Schwartz, supra,* afford little assistance here, where this court is presented with legislation specifically designed to eliminate corruption of ballot measure campaigns. Nonetheless, as will be discussed fully below, the language from *Schwartz* has all too freely been taken out of context and inappropriately applied.

In *Pacific Gas & Electric Company* v. *Berkeley, supra,* the California Court of Appeal considered the constitutionality of Berkeley's total prohibition against corporate participation

(both contributions and expenditures) in ballot measure campaigns. Noting that the *Buckley* decision struck down limitations on individual and group expenditures in candidate campaigns and that *Citizens for Jobs and Energy* v. *Fair Political Practices Commission* 16 Cal.3d 671, 129 Cal.Rptr. 106, 547 P.2d 1386 (1976) struck down limitations on individual and group expenditures for passing a ballot measure, the court claimed that the only distinction in the *Pacific Gas and Electric* case was the question of corporate activity. Thus, the court failed to consider the distinction between prohibitions and limitations or between expenditures and contributions. Accepting the narrow concept of corruption espoused in *Schwartz,* the court concluded at 60 Cal.App.3d 128-129:

> Whatever the justification for prohibiting contributions that are prone to create political debts, it largely evaporates when the object of prohibition is not contributions to a candidate or party, but contributions to a public referendum. The spectre of a political debt created by a contribution to a referendum campaign is too distant to warrant this further encroachment on First Amendment rights.

After the decision of the Montana Supreme Court in *State ex rel Nybo, supra,* the Montana legislature amended the state corrupt practices act specifically to preclude corporations from making expenditures or contributions in ballot measure campaigns. In *C. & C. Plywood Corp.* v. *Hanson,* 420 F.Supp. 1254 (D. Mont. 1976), the United States District Court considered the constitutionality of that act as amended. The *Hanson* court repeated the Montana Supreme Court's characterization of ballot measure campaigns as "legislative" rather than "political", and held, at 1263:

> Though the initiative here is not 'political' *per se,* the principle articulated by the *Buckley* court [invalidating expenditure limitations in candidate campaigns] is the same.

Failing to apprehend the generic and primary sense of the term, "political", and thus ignoring the political nature of the ballot measure process and the potential for corruption therein, the court in *Hanson* did not even discuss the difference between prohibitions and limitations or between contributions and expenditures. The *Hanson* court was further hampered because it

was presented with no evidence to show the presence of corruption in the ballot measure process; there was no evidentiary hearing. Thus, the court was forced to conclude, at 1265, that the attempts of the legislature to balance simple "influence" on the electorate by monied interests were not warranted by any government interest sufficiently compelling to justify infringement on First Amendment freedoms.

Neither the District Court in *Hanson* nor the California Court of Appeal in *Pacific Gas and Electric* took cognizance of the possibility that regulation of campaign contributions can be justified by a proper evidentiary showing. As this court stated in *First National Bank of Boston* v. *Bellotti, supra,* at 435 U.S. 789, the arguments for the proposition that corporate ballot measure campaign contribution and expenditure prohibitions serve compelling interests of the state would merit consideration if the potential for, and the appearance or reality of, corruption were made evident by the record or legislative findings.

Having no record on which to rely and unwilling to accept the potential for corruption in direct legislation as self-evident, the risk of corruption was simply not viewed as present by the *Bellotti* court, at 790-791:

> To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it: The Constitution 'protects expression which is eloquent no less than that which is unconvincing.' (Citation omitted) ... '[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the first Amendment....' (Citation omitted.)

Moreover, the court in *Bellotti* cautioned, at 791, that the government must avoid any action that smacks of paternalism. The people in a democracy are entrusted with the responsibility for evaluating conflicting arguments, and government is forbidden to assume that task lest the people lose the ability to govern themselves. The *Bellotti* court therefore concluded at 792:

> ... [I]f there be any danger that the people cannot evaluate the information and arguments advanced [by a corporation], it is a danger contemplated by the framers of the First Amendment. [Citation omitted.]

Once ballot measure campaigns were seen as beyond the pale of potential for corruption (within the narrow definitions of that term as adopted by the above enumerated decisions), of the appearance or reality of corruption, and of compelling governmental interest to regulate, a logical solecism was now available. The distinction between prohibition and limitation became secondary, as did the distinction between expenditure and contribution. Any attempt to regulate the role of money in ballot measure campaigns was quickly dismissed.

The U. S. Court of Appeals in affirming *C. & C. Plywood Corp.* v. *Hanson,* 583 F.2d 421 (9th Cir. 1978), argued that even if the Montana statute in question prohibited only corporate contributions, rather than both contributions and expenditures, it still applied to ballot measure, rather than candidate, campaigns. Since ballot measure campaigns did not have the same potential for corruption, the state had no compelling interest in prohibiting corporate participation (at 425).

In *Frias* v. *Board of Trustees of Ector County, supra,* the court was asked whether a state law prohibiting corporations and labor organizations from making contributions or expenditures in ballot measure campaigns was constitutionally valid. The court noted the recent *Bellotti* decision and struck down the Texas law. 584 S.W.2d 948. There was no discussion of the particular facts of the case before it, in which several corporations had contributed to a committee for promoting passage of a school bond issue, and whether contributions might reasonably be distinguished from expendutures, or limitations from prohibitions.

The U.S. District Court in *Let's Help Florida* v. *Smathers, supra,* lacking evidence to the contrary, freely applied the rationale of *Schwartz* and *Bellotti* involving absolute *prohibitions* of contributions *and* expenditures to mere *limitations* of contributions *alone* because it thought there was little threat of corruption (within the limited meaning given to that term by prior cases) and therefore insufficient compelling interest in regulation. 453 F.Supp. 1013.

The 5th Circuit, affirming this decision sub. nom. *Let's Help Florida* v. *McCrary, supra,* pointed out, at 621 F.2d 199,

that the sole governmental interest "recognized as a justification for restricting contributions was the prevention of quid pro quo corruption between a contributor and a candidate." This proposition is more properly stated thus: the sole governmental interest recognized in *Buckley* as a justification for restricting contributions in a candidate campaign was the prevention of quid pro quo corruption. The U.S. Court of Appeals continued, *id.*:

> The state's interest in preventing the actual or apparent corruption of candidates, which the Supreme Court found so compelling in *Buckley*, does not justify restrictions upon political contributions in referendum elections.

As we shall see below, this conclusion was too hasty, but the 5th Circuit considered, and rejected, only one other possible justification: the problem of adequate disclosure. 621 F.2d 200-201.

The myopic analysis in and logical insufficiency of the above decisions are in and of themselves dangerous. But the problem is exacerbated by the absence of any attempt to prove that money can corrupt the process as much or more than the individual. Finally, it is important to note that the cases above are distinguishable from the instant case.

United States v. *National Committee for Impeachment, supra,* struck down the application of the Federal Election Campaign Act of 1971 to a political discussion outside the ballot measure context. *Schwartz* v. *Romnes, supra,* struck down the application of a state corrupt practices act because it determined that a ballot measure campaign was not "political" within the meaning of the act. *Pacific Gas & Electric Company* v. *City of Berkeley, supra,* struck down a *total prohibition* against corporate participation in ballot measure campaigns, as did *C. & C. Plywood Corp.* v. *Hanson, supra, First National Bank of Boston* v. *Bellotti, supra,* and *Frias* v. *Board of Trustees, supra.*

The only case to date which is entirely on point is *Let's Help Florida* v. *Smathers, supra,* affirmed sub. nom. *Let's Help Florida* v. *McCrary, supra.* When that case is compared to the case at bar, evidentiary deficiencies are apparent in both. In which decision then—that of the 5th Circuit or that of the California Supreme Court—is the analysis more thorough? Unwilling to rely on the logical solecism which emerged from the "leading cases," the California Supreme Court examined afresh the nature of the direct democratic process and the meaning of corruption to arrive at its decision. That analysis deserves the affirmation of this court.

D. The Meaning of Corruption

The definition of corruption in WEBSTER'S NEW INTERNATIONAL DICTIONARY (2d.ed.) provides a helpful starting point.

> 1. A corrupting, or state of being corrupt; specif.: a. Decay; decomposition or putrefaction;—now only of decomposition following death. b. Impairment of integrity, virtue, or moral principle; depravity; impurity; specif., inducement (of a person) by means of improper considerations to commit a violation of duty. [They abstained from some of the worst methods of *corruption* usual to their party in its earlier days.—*Bancroft.*] c. Act of changing, or state of being changed, for the worse. d. A departure from what is pure, simple, or correct; as, a *corruption* of style; *corruption* in language. 2. An instance of making or becoming corrupt; a result of perversion; as, the *corruptions* of the church; specif., a deteriorated usage in a language or reading in a text. 3. A product of decomposition or putrefaction; putrid matter; pus. *now dial.* 4. An agency or influence that corrupts. [Right so is a wicked priest *corruption.*—*Chaucer.*] 5. Evil or irrascible nature. *now dial.* [My *corruption* was rising.—*Galt.*] 6. *obs* a. Infection; taint. b. Destruction. *syn* PUTRESCENCE, POLLUTION, DEFILEMENT, CONTAMINATION, DEPRIVATION, DEBASEMENT, ADULTERATION, TAINT. *ant* PURIFICATION, AMELIORATION, REFORMATION.

It is evident that the ordinary dictionary meaning of corruption embraces more than the compromising of public officials. The possibility is now recognized by political scientists. See, for example, L. BERG, H. HAHN, J. SCHMIDHAUSER, CORRUPTION IN THE AMERICAN POLITICAL SYSTEM (1976) in which the authors point out the necessity for broadening the analysis of political corruption beyond traditional concepts of personal cupidity to include the "fundamental or systemic corrupting influences" that excessive amounts of money can bring to bear on self-government.

In San Francisco's ballot measure campaign contribution limitation case, the City presented testimony by one of the authors of CORRUPTION IN THE AMERICAN POLITICAL SYSTEM, *supra.* In his testimony, Professor Berg elaborated on the meaning of systemic corruption and provided the evidentiary basis for the City's position that the unlimited right to make

large contributions to campaign organizations departs from what is "pure" and "correct" in ballot measure elections and creates the conviction in the minds of the electorate that the democratic processes have been perverted, thereby impairing the institutions of government and undermining the confidence of the governed in the legitimacy of the government and its laws.[4] Thus, corruption means more than the quid pro quo which transforms a financial gift into a political debt for the individual politician and can include departure from and perversion of the concept of direct democracy.

E. The Potential For Corruption In Ballot Measure Campaigns

The Supreme Court of Michigan, in *People* v. *Gansley, supra,* rejected the argument that Michigan's corrupt practices act was not intended to apply to ballot measure campaigns, specifically a local option election. The court observed, at 191 Mich. 365-366:

> That partisan zeal and spirit are as intense when canvassing and voting upon the question of local prohibition of the liquor traffic, as when canvassing and voting for candidates for office, is too evident to need discussion.

And again, at 366:

> When the word "political" is used as it is in this act, even if held to qualify the words "principal or measure," it is a narrow construction to hold that it applies to one or more of the recognized political parties only. The word has a much broader meaning, and often refers to matters of public policy. The first three definitions of the word as given by Webster are:
>
> "1. Of, or pertaining to polity, or politics, or the conduct of government, referring in the widest application to judicial, executive and legislative branches; of or pertaining to, or incidental to, the exercise of the functions vested in those charged with the conduct of government; relating to the management of affairs of State; as, *political* theories.
>
> "2. Having, or conforming to a polity, or settled system of administration; as a *political* body or government.

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[4] Systemic corruption in the context of ballot measure campaigns is discussed by another political scientist, Professor John Shockley, in section F. below.

> "3. Of or pertaining to the exercise of the rights and privileges or the influence by which the individuals of a State seek to determine or control its public policy; having to do with the organization or action of individuals, parties or interests that seek to control the appointment or action of those who manage the affairs of State; as, his *political* affiliations were with the Republicans."
>
> See also, Black's Law Dictionary, defining "Political." (Emphasis in original.)

In *Commonwealth* v. *McCarthy, supra,* defendant, an elected alderman of the City of Lawrence, was found guilty of violating a state law prohibiting a public official from directly or indirectly demanding, soliciting or receiving any thing of value for the political campaign purposes of any candidate for public office or of any political committee "or for any political purpose whatever". Defendant contended that the law was intended to cover only situations where the purpose of collecting money was personal gain or gain of a political party. The court disagreed, at 281 Mass. 259:

> The word 'political' in its ordinary meaning is not limited to something pertaining merely to the actual management of a government by individuals for the time holding office thereunder. The essential significance in the proper and ordinary use of the word includes anything pertaining to the establishment of a form of government. Every citizen has the right to concern himself with the form of charter under which the affairs of his city shall be conducted. This is a political right since it has to do with the fundamental plan by which the city shall be governed. A purpose to influence the exercise of political rights is a political purpose. One who has sought and attained office under a certain form of charter may in a legitimate manner pursue the political purpose of resisting any change in that charter. If he directly or indirectly collects or receives money in furtherance of that political purpose, he is doing what the statute has forbidden and made a crime.

Two primary activities of elected government officials are the consideration and adoption of legislation. The citizens of American cities, counties and states also consider and decide on legislation through the initiative and referendum processes. The laws of a democratic government inevitably affect the disparate interests of its varied citizenry. Whether made

indirectly through elected representatives or directly by voters, the legislation necessarily calls into play competing economic and social interests. These may be overt or covert.[5] Moreover, it is not uncommon that the political fortunes of candidates for, and incumbents of, elective office may rise or fall on the outcome of such legislation.[6] Hence, it is not surprising that ballot measure campaigns, like candidate campaigns, are fertile soil in which the seeds of corruption may grow.[7]

F. The Appearance and Reality of Corruption in Ballot Measure Campaigns

Once it is shown that a ballot measure campaign, like a candidate campaign, is a political phenomenon in which powerful economic and social interests are at stake and in which

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[5] See *Brown* v. *Superior Court* 5 Cal.3d 509, 522-523, 96 Cal.Rptr. 584, 487 P.2d 1224 (1971) for a discussion of the reasons why the Legislature may enact more comprehensive contribution disclosure requirements for ballot measure campaigns than for candidate campaigns. See also the discussion of Justice Mulligan, dissenting, in *Schwartz, supra,* at 495 F.2d 857-858, wherein he points out that the New York Telephone Company contributed to the YES Committee in order to curry favor with the governor of New York State.

[6] See *Commonwealth* v. *McCarthy, supra,* and *Schwartz, supra.* See also Endicott, *A Fixture in California—More Than 140 Proposals Since 1912,* L.A. Times, October 22, 1972, §F at page 5; Lee, *California,* In REFERENDUMS: A COMPARATIVE STUDY OF PRACTICE AND THEORY (Butler and Ranney, eds. 1978), abr. as Lee, *The Initiative and Referendum: How California Has Fared,* 68 NAT'L. CIV. REV. 69 (1979); Richman, *Election Law,* 1979 ANN. SUR. AM. L. 285, 294. Lee observes that this phenomenon is particularly strong in California because of weak political parties and predicts that the connection between candidates and ballot measures will occur still more frequently as party ties continue to weaken. The danger that large contributions in ballot measure campaigns will be transformed into a political debt is not addressed by disclosure laws. Contribution limitations do address this problem, however.

[7] The growing awareness of this fact in the academic, legal and political communities is well documented. A partial list of governmental and non-governmental studies concerning California includes: Cottrell, *Twenty-Five Years of Direct Legislation in California,* 3 PUB. OP. Q. 30, 42-44 (1939); KEY and CROUCH, THE INITIATIVE AND REFERENDUM IN CALIFORNIA (1939), 507-526; Radin, *Popular Legislation in California,* 23 MINN. L. REV. 559, 581-583 (1939); Radin, *Popular Legislation in California: 1936-1946,* 35 CAL. L. REV. 171, 187 (1947); Radabaugh, *Tendencies of California Direct Legislation,* 42 S.W. SOC. SCI. Q. 66, 76-78 (1961); California Legislature, Assembly Interim Committee on Constitutional Amendments, Public Hearing on the Initiative Process (1965); Endicott, *supra*; Mathews, *The Ballot Initiative: Whom Does It Serve?* L.A. Times, October 22, 1972, §F at 4; California Legislature, Assembly Committee on Elections and Reapportionment, Public Hearing on the Initiative Process (1972); Diamond, et al, *California's Political Reform Act: Greater Access to the Initiative Process,* 7 S. W. U. L. Rev. 453 (1975); Notes, *The California Initiative Process: A Suggestion for Reform,* 48 S. CAL. L. REV. 922 (1975); Lee, *supra* (1978, 1979).

political and personal fortunes can be made and destroyed, it can be demonstrated that a ballot measure campaign has a potential for corruption. However, the effect of the corruption on the confidence of the electorate in their government can be fully understood only in the context of the role and purpose of direct legislation in a democratic society.

Direct legislation—the initiative and referendum—was introduced widely in America during the early Twentieth Century, when corporations and wealthy individuals were freely acknowledged to have gained control of the electoral process, and through it, representative government itself. Direct legislation was seen as an antidote to such corruption. Diamond, *supra.* Although the rhetoric of the public debate at the time may seem idealistic and simplistic to us now, it nonetheless reveals the nature of the problem and the intent of the solution. Woodrow Wilson called direct legislation "the gun behind the door" which would keep bosses and politicians honest (Mathews, *supra*). And Theodore Roosevelt articulated the egalitarian principles underlying direct legislation, as follows:

> Popular rule means not that the richest man in the country is given less than his right to share in the work of guiding the government; on the contrary, it means he is guaranteed just as much right as anyone else, *but no more* [sic]—in other words, that each man will have his full share as a citizen . . . (Roosevelt, *National and Popular Rule,* 97 OUTLOOK 96 [1911] at 96).

Randolph Bourne, Jr., an Oregon senator, proclaimed the indispensability of direct legislation in ensuring broad participation in self-government:

> The [initiative] system encourages every citizen, however humble his position, to study the problems of government, city and state, and to submit whatever solution he may evolve for the consideration and approval of others. (Bourne, Jr., *Initiative, Referendum, and Recall,* 109 ATLANTIC MONTHLY 122 [1912] at 125-126).

Perhaps the most compelling statement on the relationship between direct legislation and the fostering of a truly democratic society was made by Hiram Johnson, who successfully campaigned for the governorship of California with the promise that he would support direct legislation:

> If we can give to the people the means by which they may prevent the misuse of power . . . then all that lies within our

> power will have been done in the direction of safeguarding the future and . . . the perpetuation of the theory upon which we ourselves shall conduct the government. (*Sacramento Bee,* January 4, 1911, at 1, quoted in Diamond, *supra,* at 456-457, footnote 13.)

Californians agreed with Governor Johnson and approved a constitutional amendment providing for direct legislation by a three-to-one margin (168,744 to 52,093 votes). State of California, Statement of the Vote of California, Special Election, October 10, 1911, at 5, quoted in Diamond, *supra,* at fn. 14, p. 457.

The integrity of the direct legislative process is safeguarded by the California Constitution. Article 2, Section 10(c), provides:

> The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval.

California courts are zealous to protect both the spirit and the letter of the direct legislative process against interference by all three branches of the government. Cf. *Schmitz* v. *Younger* 21 Cal.3d 90, 145 Cal.Rptr. 517, 577 P.2d 652 (1978); *Committee for Sewer Referendum* v. *Humboldt Bay Wastewater Authority* 77 Cal.App.3d 117, 143 Cal.Rptr. 463 (1978). Underlying the vigorous judicial protection of this precious right is a recognition of its importance to the people of California.

State Senator Haynes was perhaps the first Californian to comment on the salutary effect of direct legislation on the confidence of this State's citizens in their government. Six years after the California Constitution was amended to provide for it, Senator Haynes found its promises fulfilled. "Californians feel that . . . all the affairs of the people are in the hands of all the people . . . all the time, and this is what we believe is meant by democracy." Haynes, Direct Government in California, Sen. Doc. 738, 64th Cong., 2d Sess., 1917, at 5. Citing statistics showing that direct legislation had promoted voting, Senator Haynes attributed this effect to the people's realization that "public affairs are their 'private affairs' in a sense which has never been true before." Haynes, *supra,* at 10-11.

Direct legislation, then, was intended to correct the corrupt situation in candidate campaigns by returning government to the hands of "all of the people all of the time," thus making public interests equivalent to private interests and encouraging more participation in the electoral process. This in turn would enhance popular faith in the democratic system, engender a willingness to accept the laws thus passed, and, finally, promote the stability of government and society. For a short time, direct legislation appeared to work as intended.

Then, as it was perceived that large contributions to political committees supporting or opposing a ballot measure were used as a covert quid pro quo, that such contributions virtually eliminated the need to involve affected citizens or at least the less affluent among them, and that large contributions often "bought" a ballot measure outcome, participation in campaigns and voting again diminished, and alienation once more set in. Because direct legislation has been considered a "last resort" in the democratic process, it has been even more sensitive to the appearance and reality of corruption.

We have already mentioned the use of large contributions in ballot measure campaigns as a covert form of the quid pro quo; see footnote 6, *supra*. The following statistics show how the unlimited right to make large contributions has provided little incentive to involve residents and ordinary individuals in ballot measure campaigns.

During 1978, in Long Beach, California, an initiative appeared on the ballot calling for voter approval or disapproval of a lease already signed by the City for construction of an oil storage terminal by Sohio. The City of Long Beach had approximately 160,000 registered voters.[8] The financing of the campaign was reported as follows:[9]

Proponents:

Long Beach Civic Action Committee

Sohio Natural Resources Co. (Cleveland, OH)	$ 16,374
Sohio Transportation Co. (Cleveland, OH)	41,512
The Standard Oil Co. (Cleveland, OH)	806,682
Contributions $1,000 or over	864,568
Contributions under $1,000	–0–
Total Campaign Contributions	$864,568

[8] LYDENBERG, BANKROLLING BALLOTS: THE ROLE OF BUSINESS IN FINANCING STATE BALLOT QUESTION CAMPAIGNS (1979), at 35.

[9] *Id.*, at 37.

Opponents:
Coalition of Neighborhood and Community Associations to Stop Sohio

Contributions $1,000 or over	$ –0–
Contributions under $1,000	17,721
Total Campaign Contributions	$17,721

In June, 1980, three noteworthy ballot measures were rejected by California voters state-wide. One initiative sought to circumscribe smoking in public places. It was financed as follows:[10]

Proponents:
Californians for Smoking and No Smoking Sections

Contributions under $1,000	$525,356
Contributions over $1,000	
$1,000—$5,000 (18)	32,243
$5,000—$10,000 (2)	10,821
American Cancer Society (Oakland)	77,835
American Lung Assn. of CA (Oakland)	10,316
Lung Assn. of Los Angeles	35,980
Total Contributions over $10,000	124,131
Total Contributions over $1,000	167,195
Total Campaign Contributions	$692,551

Opponents:
Californians Against Regulatory Excess

Contributions under $1,000	$ 16,974
Contributions over $1,000	
$1,000—$5,000 (5)	7,690
$5,000—$10,000 (1)	7,120
American Brands	50,000
Brown & Williamson	458,463
Lorillard	303,127
Philip Morris	882,000
R. J. Reynolds	999,834
Total Contributions over $10,000	2,693,424
Total Contributions over $1,000	2,708,234
Total Campaign Contributions	$2,725,208

Another initiative would have imposed a tax on large oil, gas, coal and uranium companies and used the revenue to finance public transportation and the development of alterna-

[10] LYDENBERG, BANKROLLING BALLOTS: 1980 UPDATE (Manuscript for Spring, 1981, publication), at 33-34. These are not final figures. We have summarized the data and have reached totals differing from the author's.

tive energy sources. California's governor strongly supported the measure, and a former official of his administration ran the campaign.[11] It was financed as follows:[12]

Proponents:

California Oil Profits Coalitions/Citizens to Tax Big Oil

Contributions under $1,000	$168,991
Contributions over $1,000	
$1,000—$5,000 (54)	83,700
$5,000—$10,000 (10)	61,500
Corporate Trust Account	12,000
Headland Properties	15,168
Louis Tompkins	16,000
Total Contributions over $10,000	43,168
Total Contributions over $1,000	188,368
Loans—Total Loans	106,500
Total Campaign Contributions and Loans	$463,859

Opponents:

Californians for Fair Taxation

Contributions under $1,000	$ 108,232
Contributions over $1000	
$1,000—$5,000 (75)	314,449
$5,000—$10,000 (20)	129,657
AMINOIL	62,967
Atlantic Richfield	542,634
Bankamerica	25,000
Conoco Oil (Houston, TX)	27,443
Douglas Oil	62,761
Edgington Oil	12,497
Exxon	242,031
General Electric Co. & Utah Int'l. Inc.	25,000
Getty Oil	214,797
Gulf Oil (Houston, TX)	165,378
Kernridge Oil (Houston, TX)	62,474
Mobil Oil	384,566
Natomas Company	10,870
Occidental Petroleum (Houston, TX)	12,500
Pauley Petroleum	12,497
Pennzoil (Houston, TX)	50,000
Shell Good Government Fund	636,794
Standard Oil, California	1,079,663
Standard Oil, Indiana	50,000
Standard Oil Co. (SOHIO)	159,776
Sun Oil Co. of Pennsylvania	25,175

[11] *Id.*, at 35.

[12] *Id.*, at 38-40. We have summarized the figures; our totals do not agree with the author's.

Tenneco	62,500
Texaco	263,615
Tosco	176,635
Union Oil Co. of California	549,032
Union Pacific	62,424
Total Contributions over $10,000	4,979,029
Total Contributions over $1,000	5,423,135
Loans—Total Loans	407,000
Total Campaign Contributions and Loans	$5,938,367

Finally, a third initiative sought to repeal all existing rent control ordinances. It was opposed, among others, by the governor and the mayor of Los Angeles.[13] It was financed as follows:[14]

Proponents:	
Contributions under $1,000	$1,893,724
Contributions over $1,000	
$1,000—$20,000 (957)	3,196,089
$20,000—$50,000 (30)	915,542
Bank America Realty Investors (San Francisco)	54,012
Brandenburg, Staedler & Moore Real Estate Development (San Jose)	55,000
The Irvine Company (Newport Beach)	82,250
Park Newport Ltd. (San Francisco)	62,100
Taube Associates, No. 205 (Belmont)	90,500
Total Contributions over $50,000	343,862
Total Contributions over $1000	4,455,493
Loans—Total Loans	401,000
Total Contributions and Loans	$6,750,217
Opponents:	
Contributions under $1,000	$157,897
Contributions over $1,000	
$1,000—$5,000 (14)	24,157
Total Contributions over $1,000	24,157
Loans—Total Loans	12,242
Total Contributions and Loans	$194,296

Can the political committee which relies on large contributions buy the outcome of a ballot measure campaign? As Appellants herein point out, at p. 26 of their brief to this court, students of this subject agree only that money is but one factor

[13] *Id.*, at 98.

[14] *Id.*, at 99-101. We have summarized some of the figures and reached totals differing from the author's.

in the outcome. Appellants assert, at p. 27 of their brief, that between 1954 and 1974 in California, in 28 controversial ballot measure campaigns, the side that spent the most won only 50% of the time. Compare, however, LYDENBERG (1980), *supra,* at p. 1, where he finds that of 19 recent nationwide campaigns examined, the side with corporate backing outspent opponents by better than 2 to 1 in 15 campaigns and won in 12 of them. According to a May 6, 1981, telephone conversation with Professor Larry Sabato (Department of Government, University of Virginia), his forthcoming work, THE RISE OF POLITICAL CONSULTANTS: NEW WAYS OF WINNING ELECTIONS (Random, Basic Books, September, 1981), notes, at Chapter 3, that money in ballot measure campaigns is probably more influential than in candidate campaigns.

The point is not how much money a political committee raised, but rather how it raised the money. A measure which passes because every affected citizen contributed a dollar to a committee in support of it is much more compatible with the goal of direct legislation than a measure which passes because a few distant corporations or millionaires contributed an equal amount to that committee. Moreover, the point is not how people voted, but how many people did not vote and why. The point is not whether the outcome was bought, but rather how it was perceived.

Has the injection of unlimited contributions to political committees in ballot measure campaigns undermined citizen participation in the campaigns themselves, hastened the decline of voting, and furthered alienation from government and its laws? Appellants assert, as pp. 27-28, that no such results have occurred. But see Notes, *supra,* fn. 75 at 936-937, and Shepard, *Participation in Local Policy-Making: The Case of Referenda,* 56 SOC. SCI. Q. 55 (1975) at 69-70. See also BERG, HAHN and SCHMIDHAUSER, *supra,* and U.S. Senate Judiciary Committee, Subcommittee on the Constitution, Hearings on the Voter Initiative Constitutional Amendment (1978).

The concept of systemic corruption in ballot measure campaigns is well-illustrated by an article prepared for the above-mentioned Senate hearings by Professor John S. Shockley. Following statewide ballot measure campaigns in Colorado during 1976, Professor Shockley sought to investigate the widespread belief that the election had been "bought." Professor Shockley concluded, at 187-188:

Of greatest merit seem to be the criticisms about the lack of any limit on campaign contributions which anyone—citizens, corporations, or unions—could give to a campaign. As long as wealth continues to be so unevenly distributed among the populace, and as long as it remains so much easier for vested interests to spend money than for citizens and groups who stand to receive no direct personal advantage from the results to do so, the initiative results are likely to be skewed in the direction of existing power. But citizen-initiated proposals (as distinct from those referred by the legislature) are likely to continue to challenge the existing structure—either from the right or the left—for the simple reason that if proponents could get their measures passed by the legislature, they would not need to use initiatives. The Colorado Daily may have been correct, however, when it charged that "What was lost on Tuesday was more than . . . good amendments. *The big money boys have undoubtedly put a chill on the efforts of citizen groups to put issues on the ballot. Obtaining the needed signatures for an initiative is hard work, and nobody wants to waste his or her time if all is to be stomped under the bankrolls of those with power.*"

As long as corporations are as powerful as they are, and have the money that they have, and as long as they face no limitations on the amount of money they can spend in political campaigns, they have a very good chance of preventing legislation which they do not like. This is true particularly when contrary ideas and evidence do not easily reach the voters, as the interviewing on several of the initiative campaigns indicated so poignantly.

* * *

The pluralist vision of an American politics which reflects the wills of the diversity of the American people seems to be swamped by the extraordinary inequality of campaigns. *If the initiative is to be used* as a mechanism for new ideas, and *as a way for citizens to speak directly to issues, it would seem that some way would have to be devised to allow voters a reasonable, intelligent choice, to allow those without money and power, or with unpopular opinions, a chance to get their ideas across to the public.* Free access to the media during the campaign, limits on television and radio advertising techniques, and *limits on the amount of contributions corporations and others could make to cam-*

paigns would all be a start in this direction. Without important mechanisms to insure for this, the result may be a caricature of an informed citizenry voting on the basis of alternatives presented to them.

This study did not find Colorado citizens apathetic, cynical, or ignorant towards the initiatives. The majority of people were interested in the issues and did have ideas on them. But on several proposals their ideas tended to reflect the latest polling techniques, campaign strategies and gimmicks of those with the most power and money. *The corrosive impact of this unregulated, grossly unequal power perverted the democratic process in a manner for all to see, whether or not the final election results were to one's liking.* (Emphasis added.)

G. The Compelling Interests Of The State In Regulating Ballot Measure Campaigns

It should require no argument that a truly democratic ballot measure campaign achieves the goals, enumerated in *Bellotti, supra,* of (1) preserving the integrity of the electoral process; (2) preventing corruption; (3) sustaining the active alert responsibility of the individual citizen in a democracy for the wise conduct of government; and (4) preservation of the individual's confidence in government.

It cannot be gainsaid that democratic government's claim to legitimacy rests in large part on the commonly held existential conviction of western civilization that a democracy is of the people, by the people, and for the people. It is clear that this legitimacy is undermined when the government is in fact controlled, or appears to be controlled, by an affluent minority.

Even if people cannot be manipulated by slick advertising blitzes, enormous expenditures of money launched for or against various legislative proposals placed before the people necessarily will detract from the willingness of those on the losing side to accept the majority verdict. The first step to social disruption in a democratic society is the breakdown in the confidence of the governed in the legitimacy of the governors and their laws. This is especially true in the ballot measure context involved in the instant case. The preservation of the willingness to accept the law is the most compelling of all governmental purposes. For with the breakdown of this consensus comes the destruction of the government. It is beyond dispute that in a democratic society the government is entitled to protect itself from destruction. Nor can it be

disputed that to the extent that people believe that the government is controlled by monied influences rather than by the citizens, their conviction in the legitimacy of the government and their willingness to defer to its authority are severely impaired and the authority of the government as an institution of social order is undermined.

H. Contribution Limitations to Political Committees Serve These Interests Without Broad Infringement on Basic Political Freedoms

Contribution limitations in ballot measure campaigns impose only a marginal restriction on the contributor's freedom of speech. As the court stated in *Buckley, supra,* at 424 U.S. 20-21:

> A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues.

Moreover, contribution limitations do not in any way curtail direct expenditures by any individual or organization in promoting or opposing any ballot measure. Any law which encourages those interested in the outcome of an election to engage in direct communication with the voters certainly promotes the integrity of the electoral process in general and prevents the corruption of the ballot measure process in particular. By encouraging direct participation while curbing excessively concentrated money contributions, contribution limitations also serve to foster and nourish an alert citizenry which is aware of and involved in the debate over issues in the marketplace of ideas. And, in lessening the appearance of control of the electoral process by a wealthy minority, contribution limitations further citizen confidence in government.

Contribution limitations in ballot measure campaigns impose only a marginal restriction on the contributor's freedom of association. Making a contribution serves to affiliate a person with a committee seeking to further a political viewpoint on a ballot issue, and it enables like-minded persons to pool their resources in furtherance of common political goals. Thus, while contribution ceilings perhaps limit one means of political association, they leave the contributor free to become a member of any political group and to assist personally in the organization's efforts. See *Buckley, supra,* at 22. Again, any law which

encourages those interested in the outcome of an election to become personally active, in a political association as well as directly, furthers the compelling governmental interests recognized in *Bellotti, supra.*

Likewise, contribution limitations in ballot measure campaigns impose only a marginal restriction on the recipient's freedoms. Contribution limitations do not prevent a political committee from raising funds, but merely require that it seek those funds from a larger number of people. *Buckley, supra,* at 21-22. A statute which does not necessarily prevent a committee from amassing the resources needed for effective advocacy, while requiring the committee to raise funds from a greater number of people, serves to promote the integrity of the ballot measure process and to prevent the appearance as well as the reality of its corruption. And by requiring a larger pool of contributors to finance campaigns, contribution limitations again serve to sustain an active and alert body politic and to nurture confidence in democratic government.

In view of the foregoing, it is clear that contribution limitations in ballot measure campaigns are not attempts to impose paternalistic safeguards for fear that the voters will not be able to weigh and evaluate the voices they hear. Nor will limitations on contributions narrow the scope or depth of discussion on an issue. Rather, by encouraging broader participation in the debate over ballot measures, they promote more vigorous discussion among the citizenry.

The *Buckley* court addressed the claim that the $1,000 contribution limit for any candidate was unrealistically low because it was not narrowly drawn so as to distinguish between expenses necessary in House, Senate and presidential elections, stating at 30:

> While the contribution limitation provisions might well have been structured to take account of the graduated expenditure limitations for house, senate, and presidential campaigns, Congress' failure to engage in such fine tuning does not invalidate the legislation. As the Court of Appeal has observed, '[I]f it is satisfied that some limit on contributions is necessary, a court has no scalpel to probe, whether, say, a $2,000 ceiling might not serve as well as $1,000 (citations omitted).' Such distinctions in degree become significant only when they can be said to amount to differences in kind. (Citations omitted)

In light of *Buckley, supra,* once a court finds that some limit is permissible, then the determination of the amount of contribution limit rests solely in the province of the legislature, unless the limitation is found to be so unreasonable as to constitute arbitrary or capricious action.

The $1000 contribution limit for, among other things, presidential campaigns, was upheld by the court in *Buckley, supra.* If the $1000 contribution limit is not unreasonable in the context of a national presidential campaign, it can hardly be argued that the $250 limitation in this case for a single local ballot proposition is too low and therefore unreasonable. It is submitted that under *Buckley, supra,* the $250 campaign contribution limit is clearly within the bounds under the First and Fourteenth Amendments.

CONCLUSION

In view of the minimal attempt by the City of Berkeley to sustain its position by competent evidence, it is respectfully submitted that this court should limit its decision to the record herein. This court should refuse to preclude other governments from defending their contribution limitations in ballot measure campaigns. When governments adopt laws designed to protect and promote the constitutionally guaranteed right of the people to direct legislation, those governments deserve a fair and full opportunity to defend their legislative decisions in the courts.

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Respectfully submitted,

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